



BOARD OF INQUIRY (*Human Rights Code*)

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Nicole Curling dated April 15, 1994, amended August 28, 1998, alleging discrimination in employment on the basis of sex, sexual harassment and sexual solicitation.

B E T W E E N :

Ontario Human Rights Commission

- and -

Nicole Curling

Complainant

Alexander Torimiro

- and -

The Victoria Tea Company Ltd.

- and -

The Torimiro Corporation

Respondents

INTERIM DECISION

Adjudicator : Katherine Laird

Date : September 30, 1999

Board File No: BI-0245-99

Decision No : 99-013

Board of Inquiry (*Human Rights Code*)
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A P P E A R A N C E S

Ontario Human Rights Commission)	Ena Chadha, Counsel
)	Lisa Cirillo, Counsel
)	
Nicole Curling, Complainant)	Geri Sanson, Counsel
)	
)	
Mr. Alexander Torimiro, Personal Respondent)	On his own behalf (from May 5, 1999 to July 30, 1999)
)	Munyonzwe Hamalengwa (from July 30, 1999 to September 23, 1999)
)	No one appearing on September 28, 1999
)	
The Victoria Tea Company Ltd.)	Alexander Torimiro (from May 5, 1999 to July 30, 1999)
The Torimiro Corporation,)	Munyonzwe Hamalengwa (from July 30, 1999 to September 23, 1999)
Corporate Respondents)	No one appearing on September 28, 1999
)	
)	

The hearing into the human rights complaint of Nicole Curling ("Curling") began by conference call on May 5, 1999, and continued for several days of in-person hearing in July 1999. It was originally expected that all of the evidence would be heard during the July hearing dates, but some of the scheduled days were lost when the parties entered into settlement discussions. When the hearing adjourned in July, the cross-examination of the complainant was still in progress. The hearing was re-convened by conference call on August 5, 1999 and on September 22, 1999, and further dates were set for in-person hearings. Although prior to August, only the Ontario Human Rights Commission ("Commission") was represented by counsel, the complainant retained counsel for the continuation of the hearing on the August 5 conference call, as did the personal respondent, Alexander Torimiro ("Torimiro"), on his own behalf and on behalf of the corporate respondent, the Victoria Tea Company Ltd. ("Victoria Tea").

On the conference calls on August 5 and September 22, 1999, all three counsel raised a number of procedural and interim issues. I made rulings during the conference calls on some of the matters raised, and set time lines for the filing of notices of motion in respect of the remaining matters. These motions were scheduled to be heard on September 28, 29 and 30, 1999; Torimiro was to testify in support of his motions on the 28th.

On September 23, 1999, the Board of Inquiry ("Board") was copied on correspondence from respondent counsel advising his clients that he would no longer be able to represent them at the hearing due to a "breakdown" in solicitor-client communication. The same letter confirmed the hearing dates scheduled for the following week. Unfortunately, when the hearing reconvened on September 28, 1999, Torimiro was not in attendance. The Registrar of the Board attempted to contact him by telephone and was advised by someone at his telephone number that he was in New York. Although the Registrar was advised that a letter would be sent to the Board later that day, no request was made for an adjournment and no letter was received prior to the adjournment of the hearing on September 28, 1999.



Having satisfied myself that the respondents had actual advance notice of the scheduled hearing dates, I proceeded to consider the motions set down for September 28, 29 and 30. This is my decision in respect of those motions.

Motions Brought by the Ontario Human Rights Commission

The Commission's Notice of Motion requested that the Board:

1. amend the complaint to add "The Torimiro Corporation" as a named respondent;
2. amend the complaint to add the allegation that the complainant was subjected to reprisal by the respondents for seeking to enforce her rights under the *Code*;
3. direct the respondents to "cease and desist threatening and intimidating communication and contact with Counsel and witnesses".

The first order sought by the Commission was dealt with on the September 22 conference call. During that call, in reviewing the motions to be argued the following week, counsel for the respondents advised me that his clients were not opposing the addition of The Torimiro Corporation as a respondent to these proceedings. I made an oral ruling on the conference call adding The Torimiro Corporation as a party respondent, pursuant to s.39(2) of the *Human Rights Code* ("*Code*"). I confirmed that order at the hearing on September 28. In my view, adding a respondent to the proceeding does not require or entail an amendment to the complaint itself.

With respect to the second part of the motion, I made an oral ruling, at the September 28 hearing, adding an allegation of reprisal, within the meaning of s.8 of the *Code*, to the matters at issue in this proceeding. I was satisfied, based on the materials filed and submissions of the Commission, that it is appropriate and within my authority, pursuant to s.36(1) and s.39(1)(a) of the *Code*, to consider the evidence, if any, as to whether or not the respondents have infringed the complainant's right to be free from reprisal.

Finally, I reserved on the Commission's motion for an order to restrain the personal respondent from engaging in certain conduct alleged to be of a threatening and intimidating nature. In support of its motion, the Commission relied on the fact that Torimiro had filed and served the complainant with a civil claim, seeking the sum of \$1,500,000, for damage to reputation arising out of her human rights complaint. Torimiro stated in correspondence to complainant counsel that he would shortly be serving the Commission itself, and several named witnesses for the Commission, with similar

statements of claim. The statement of claim was served on Curling in the Board's hearing room and in a manner which was described by Commission counsel as abrupt and threatening. Further, Commission counsel relied on correspondence sent by Torimiro to her client, the Commission, directed to the attention of its Executive Director, dated August 27, 1999.

In that correspondence, which was filed in the motion record, Torimiro wrote as follows:

It is obvious to our side that the commission is desperate. You have started a fight that you can not win. You have permitted Ms. Chadha [Commission counsel] to proceed in a very reckless manner, to get witnesses who will commit perjury in support of the complainant

Ms. Chadha is now an "authority" on the sexual behavior of black men and has referred to African black men, with myself in particular, as sexual predators. She, however, comes from Punjabi stock who allow their women as young as 10 years of age to be rapped (*sic*) by paedophiles (*sic*), under the disguise of pre-arranged marriages.

I am sending a direct warning to the commission and to all persons involved in this matter on behalf of the complainant. If the commission continues on this reckless path, I promise you a fight that will live in the annals of history and make every front page from Johannesburg to Oslo, from New York to Melbourne.

In its submissions in support of a "cease and desist" order, the Commission referred me to an interim decision of the Board in *Anishinabie v. The Near New Store et al.* (Unreported, June 16, 1995) in which a respondent was found to have used intimidating language in communications with a complainant and was ordered not to have further direct contact with the complainant. Counsel also referred me to my authority, under the *Statutory Powers Procedure Act*, R.S.O. 1990, c.S.22 ("*SPPA*"), to make certain orders in respect to the conduct of parties and counsel at its hearings. The following sections are relevant to this motion:

- s. 9(2) A tribunal may make such orders or give such directions at an oral or electronic hearing as it considers necessary for the maintenance of order at the hearing, and, if any person disobeys or fails to comply with any such order or direction, the tribunal or a member thereof may call for the assistance of any peace officer to enforce the order or direction, and every peace officer so called upon shall take such action as is necessary to enforce the order or direction

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and may use such force as is reasonably required for that purpose.

- s. 23 (1) A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

The Commission appears before me as the party with statutory carriage of the human rights complaint in this proceeding: s. 39(1)(a)*Code*. I am satisfied, based on the material filed by the Commission in support of the motion, that the personal respondent has taken certain steps which could have the effect of intimidating counsel for the Commission and the witnesses who are under summons to testify on behalf of the Commission and in support of the complaint. Torimiro's conduct in using our hearing room to serve a civil action against the complainant, taken with his stated intention to bring similar actions against other witnesses, could have a detrimental effect on my ability to maintain order at the hearing. More significantly, his conduct in issuing a "direct warning" to the Commission and "all persons involved in this matter on behalf on the complainant" could intimidate Commission and complainant counsel and could frighten witnesses and affect their willingness to give full and complete evidence in the hearing.

In the circumstances, I make the following pursuant to my authority, under s. 9(2) and s. 23(1) of the *SPPA*, to maintain order at the hearing and to prevent an abuse of the hearing process.

I order and direct Alexander Torimiro to refrain from any contact with Nicole Curling or with the Ontario Human Rights Commission in respect of the complaint before this Board of Inquiry except where contact is arranged through counsel for the complainant or counsel for the Commission in respect of their clients.

I further order and direct Alexander Torimiro to refrain from any contact with any witnesses testifying on behalf of Nicole Curling or the Ontario Human Rights Commission except where contact is arranged through counsel for the complainant or counsel for the Commission or counsel for the witness, if any.

I further order and direct Alexander Torimiro to refrain from using threatening or insulting language, including insults of a racial nature, in any written or oral communications in respect of this proceeding with the other parties, their counsel or their witnesses.

Motions Brought by the Respondents

The notice of motion filed by respondent counsel asked for:

1. a stay of the proceedings;
2. or in the alternative, an order requiring the complainant to deliver “the original copy, and uncensored, of the Diary of the entire 1993 year, to Alexander Torimiro and the Victoria Tea Company for inspection and possible forensic examination of the date and writer of the contents of the Diary”.

In addition, respondent counsel advised me, on the September 22nd conference call, that he intended to file a further notice of motion seeking: disclosure of Commission counsel’s interview notes in respect of a meeting with a respondent witness; and access to the notes of Commission counsel or my own notes (or a summary of my notes) from the hearing days before he was retained as counsel. No further notice of motion was received by the Board and accordingly, these issues are not presently before me.

Counsel for the complainant and the Commission urged me to consider the matters raised in respondents’ notice of motion notwithstanding Torimiro’s absence at the hearing. I declined to do so.

With respect to the stay application, I noted that the stated grounds for the motion were prejudice arising out of the 5 year delay prior to referral of this complaint to the Board. Torimiro had raised delay as a ground for early dismissal of the complaint at the first day of in-person hearing, and I ruled against him at that time after considering his submissions and those of Commission counsel.

However, motions with respect to prejudice arising out of delays in the human rights investigation process have been considered by the Board at every stage in the hearing process. Even were I to dismiss the current motion, I would not make an order preventing him from re-newing his application for a stay at a later stage in the proceeding should there be evidence that delay prevented the Board from holding a fair hearing into the subject-matter of the complaint.

With respect to the motion for production of the complainant’s original diary for the 1993 year, I note that complainant counsel had offered, on the September 22, 1999 conference call, to send the diary to a forensic expert for analysis, and to allow respondent counsel to review the entire original

diary in her office. What is at issue on the motion is whether the complainant should be required to release the full original diary to the respondents without restrictions.

In opposing the motion, complainant counsel advised me that she would argue that the full diary did not meet the threshold for disclosure, which she described as "arguable relevance". Additionally, she advised me that she would be arguing that the diary was protected by a qualified privilege attaching to private records.

As I noted at the hearing on September 28, Torimiro objected to the admissibility of several photocopied pages of the diary at the hearing on July 22, when he was unrepresented by counsel, and then withdrew his objection prior to any ruling on admissibility. He received a copy of the approximately 20 pages of the diary, covering portions of the weeks between July 2 and November 26, 1993, which were admitted as exhibits in the complainant's evidence. Given that Torimiro is once again unrepresented in these proceedings due to what counsel described as a "breakdown" in solicitor-client communications, I have no way of knowing if Torimiro intends to pursue the motion filed by his former counsel for production of the full original diary. On this basis, I declined to deal with the motion in his absence.

Subsequent to adjourning the hearing on September 28, I was advised that the Board Registrar has received correspondence from Torimiro in which he stated that he will not be attending further hearings before the Board.

If Torimiro intends to participate further in this hearing, and intends to pursue either of the two motions filed, for a stay and for production of the full 1993 diary, on his own behalf and on behalf of the corporate respondents, he is directed to so advise the Board and opposing counsel by no later than October 8, 1999. If the Registrar is advised that the respondents intend to pursue either or both motions, we will schedule October 13, 1999 as a hearing day for that purpose. If the motions are abandoned, the hearing will continue on the merits on the other previously scheduled days.

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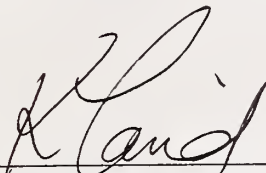
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Pursuant to s.7 of the *SPPA*, the personal and corporate respondents are specifically advised that, if they are not in attendance or represented at the continuation of this proceeding, the hearing will continue to its conclusion without further notice.

Dated this 30th day of September, 1999

A handwritten signature in black ink, appearing to read 'K. Laird', written over a horizontal line.

Katherine Laird
Member, Board of Inquiry

